



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: H.J. Group Ventures, Inc.

File: B-246139.3

Date: August 21, 1992

Carl Payne Tobey Jr., Esq., and Donald O. Ferguson, Esq., Gardner & Ferguson, Inc., for the protester, Patrick S. Hendrickson, Esq., Fetzer, Hendrickson & Simonsen, for Beneco Enterprises, Inc., an interested party, Laurie S. Stiteler, Esq., and Timothy A. Beyland, Department of the Air Force, for the agency. John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In response to a General Accounting Office decision that an award under the request for proposals (RFP) was improper because it was based on a performance risk, whose relative importance was not disclosed vis-a-vis the evaluation factors specifically identified and listed in the RFP, agency properly amended RFP to include an additional weighted evaluation factor for performance risk and reopened discussions to allow offerors to submit revised proposals.

DECISION

H.J. Group Ventures, Inc. protests the determination of the Department of the Air Force to reopen discussions with offerors and allow for the submission of revised proposals under request for proposals (RFP) No. F41650-91-D-3008, issued as a total small disadvantaged business set-aside for the simplified acquisition of base engineering requirements (SABER) at Kelly Air Force Base.¹ The Air Force took the protested action in response to H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203, sustaining H.J.'s protest. H.J. essentially contends that the Air Force's implementation of the corrective action, which we recommended in our prior decision, is contrary to law and regulation.

¹The SABER program provides for small-to-medium size maintenance and repair and minor construction projects in support of base civil engineers.

We deny the protest in part and dismiss it in part.

The RFP, issued May 15, 1991, contemplated the award of a fixed-price, indefinite quantity contract for a 1-year base period with four 1-year options. Offerors were required to submit a technical proposal, a cost/price proposal, and a past performance proposal.

The solicitation stated that the source selection would be based on an integrated assessment of each offeror's ability to satisfy the requirements of the solicitation, consisting of an evaluation of both general considerations, such as past performance, proposed contractual terms and conditions, and pre-award survey results, and the evaluation of technical and price proposals. The RFP listed the following evaluation criteria in descending order of importance:

- a. Project Management
- b. Subcontract Management
- c. Company Experience
- d. Cost/Price

The RFP stated that each specific evaluation factor, except cost/price, would receive a color rating, depicting how well the offerors' proposals met the evaluation standards, and a proposal risk rating, assessing the risks associated with the offerors' proposed efforts to accomplish the RFP requirements.

After setting forth the foregoing weighted technical and cost/price factors, the RFP stated that "[i]n addition, the [g]overnment will conduct a performance risk analysis, based on the offeror's present and past performance as it relates to the probability of successfully accomplishing the proposed effort." The RFP, however, did not indicate the relative importance of the performance risk assessment, stating only that "[p]erformance risk is a structured treatment of past performance used as a general consideration."

The Air Force received nine proposals by the RFP's May 15, 1991, closing date. Seven proposals were included in the competitive range. The proposals were evaluated, and best and final offers requested and evaluated. The source selection evaluation team found the proposals submitted by H.J. and another offeror, Beneco Enterprises, Inc., to be "equal in technical acumen," with both proposals receiving the same overall ratings. H.J.'s evaluated price was lower than Beneco's evaluated price. The Air Force conducted its performance risk assessment, and concluded that H.J. had a "moderate" performance risk, while Beneco had a "low" performance risk. The agency subsequently selected Beneco for award based on its low "performance risk," which the

source selection authority found outweighed H.J.'s price advantage.

H.J. protested to our Office on October 8, 1991, arguing that the Air Force acted improperly in awarding the contract to Beneco, a technically equal but higher priced offeror, based on Beneco's lower assessed performance risk.

In H.J. Group Ventures, Inc., supra, we determined that the Air Force had acted improperly in making award to Beneco based on its lower performance risk. The RFP had provided that performance risk would be a "general consideration" in the integrated assessment of proposals, and had not provided the relative importance of the performance risk assessment vis-a-vis the evaluation factors, specifically identified and listed in the RFP in descending order of importance. Because contracting agencies are required by statute to set forth, at a minimum, all significant evaluation "factors (and significant subfactors) . . ." and their relative importance, 10 U.S.C. § 2305(a)(2)(A) (Supp. II 1990), we found that under the RFP here the unweighted "general consideration" of performance risk could not properly be given significant weight in the award selection. Consequently, we concluded that the agency could not make award to Beneco merely because of its lower performance risk, where Beneco's offer, under the stated and weighted evaluation criteria, was technically equal to, but higher in price than, H.J.'s offer.

We thus sustained the protest and recommended that the Air Force, if it believed past performance as it relates to the probability of successfully performing the contract should be separately evaluated, list and define this element as an evaluation factor for proposals, state the relative weight that the factor will be accorded in the evaluation, and reopen discussions and solicit revised proposals from the competitive range offerors. We noted that if upon review the agency concluded that past performance was adequately addressed under the RFP's company experience technical evaluation factor, it should terminate Beneco's contract and make award to H.J.

In response to our decision and recommendation, the agency issued amendment No. 0003 to the solicitation on March 30, 1992. This amendment advised offerors that each specific evaluation factor, except cost/price (i.e., project management, subcontract management, company experience), would receive a color rating, a proposal risk rating, and a performance risk rating, with each of these ratings being accorded equal consideration in the source selection decision. The amendment further reopened discussions, and provided for the submission of revised proposals by the close of business on April 17, 1992.

H.J. protests that conducting discussions and allowing for the submission of revised offers on all aspects of the proposals at this point is improper because cost and technical information has been revealed to the offerors during the post-award debriefings and in the course of the initial protest. H.J. thus asserts that the agency's actions will lead to impermissible technical transfusion and will create a prohibited auction situation. H.J. concludes that under the circumstances the Air Force should conduct discussions and permit the submission of information relative only to the evaluation of the offerors' performance risk and not allow other revisions to the technical or cost proposals.²

We disagree. In implementing our recommendation the Air Force has chosen to separately evaluate performance risk and has elevated its importance from a "general consideration," which could not be accorded significant weight in the source selection process, to one-third of the non-price evaluation. Because past performance is now significantly more important in the source selection process than it was, offerors must be provided with the opportunity to modify their technical and cost/price proposals to reflect this change of emphasis if desired. It is fundamental to negotiated procurements that offerors be placed in a position to make accurate and realistic proposals by informing them in the solicitation of the relative importance to be attached to each evaluation factor. AEL Serv. Corp., et al., 53 Comp. Gen. 800 (1974), 74-1 CPD ¶ 217. Indeed, as noted above, the agency is required by statute to set forth, at a minimum, all significant evaluation "factors . . . (and significant subfactors)." 10 U.S.C. § 2305(a)(2)(A). Thus, it is only


²H.J. also argues in a supplement to its protest, filed on April 17, that it is improper to include past performance as an evaluation factor and separately evaluate it. This argument essentially constitutes a request for reconsideration of the recommendation contained in our original decision, where we stated that if the Air Force believed that past performance should be separately evaluated, it should "define this element as an evaluation factor for technical proposals, and state the relative weight that the factor will be accorded in the technical evaluation." Under our Bid Protest Regulations, a request for reconsideration must be filed with our Office within 10 days after the requesting party knows or should know the basis for reconsideration. 4 C.F.R. § 21.12 (1992). This rule applies to a request for modification of a remedy recommended by our Office. See The Howard Finley Corp., B-226984.2, Nov. 21, 1988, 88-2 CPD ¶ 492. As H.J.'s challenge to our recommendation was not filed with our Office until nearly 2 months after our decision was issued, we find it untimely and will not consider it.

appropriate that the Air Force reopen discussions and allow for the submission of revised proposals based upon the revised factors, FKW Inc. Sys.; LoleJohn Mechanical Corp., B-235989; B-235989.2, Oct. 23, 1989, 89-2 CPD ¶ 370.

As to H.J.'s concerns regarding possible technical trans- fusion, the record contains no evidence that indicates that information concerning any offeror's technical approach was disclosed to any other offeror. Moreover, while it is true that Beneco's award price was disclosed, as well as the fact that H.J.'s price was lower, any possible auction atmosphere will be mitigated by the fact that cost/price was the lowest weighted evaluation criterion. In any case, the possibility that a contract may not be awarded on a basis consistent with the evaluation criteria--which will occur if proposals are not submitted and evaluated under the stated evaluation criteria--has a more harmful effect on the integrity of the competitive procurement system than the fear of an auction, with the statutory requirements for competition taking priority over the regulatory prohibitions of auction techniques and technical leveling. See Unisys Corp., 67 Comp. Gen. 512 (1988), 88-2 CPD ¶ 35.

The protester also argues that the solicitation is defective in that the time set for submission of revised proposals-- "[c]lose of [b]usiness, 17 April 1992"--is "too imprecise" because April 17, 1992, is "Good Friday" and as such is a "semi-holiday." We will not consider this argument on the merits. H.J. has reportedly submitted a revised proposal in a timely manner and there is no indication that the agency's designation of the closing time prejudiced the protester or was to the advantage of any other offeror.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel